HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.17546 OF 1998

Between:

T.Gangadhar

. . .Petitioner

AND

The Regional Manager,
APSRTC, Nizamabad and another

. . .Respondents

:: ORDER ::

Counsel for the petitioner : Shri V.Narasimha Goud

Counsel for the respondents : Shri V.S.K.Rama Rao
for Shri V.T.M.Prasad

Dated: 18th April, 2007

In this petition, the petitioner has prayed for quashing orders dated 06-01-1995, 01-10-1997 and 16-05-1998 passed by respondent No.3, Deputy Chief Traffic Manager, Andhra Pradesh State Road Transport Corporation, Nizamabad (respondent No.2) and Regional Manager, Andhra Pradesh State Road Transport Corporation, Nizamabad (respondent No.1) respectively.

The petitioner joined the service of the Andhra Pradesh State Road Transport Corporation (for short 'the Corporation) as driver in 1987. While he was posted in Armoor Depot, Nizamabad District, bus No.AAZ – 2846 driven by the petitioner met with an accident on 21-5-1994 near Vannel-K bus stop resulting in injuries to Smt.Sayamma. This incident led to registration of criminal case No.242/94 under Section 304-A IPC. After trial, the learned Judicial First Class Magistrate, Armoor, vide his detailed judgment dated 27-10-1997, acquitted the petitioner.

In the meanwhile, respondent No.3 issued notice dated 18-06-1994 and called upon the petitioner to show cause as to why he may not be punished on the charge of rash and negligent driving. The latter filed reply dated 22-06-1994 and denied the allegation. Respondent No.3 did not conduct enquiry in accordance with the provisions of the Andhra Pradesh State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations, 1967 (for short, 'the Regulations') and straight away passed orders dated 06-01-1995 whereby he imposed the penalty of deferment of one annual

increment for a period of one year with future effect on the petitioner. The appeal and revision preferred by the petitioner were dismissed by respondent Nos.2 and 1 respectively vide their orders dated 01-10-1997 and 16-05-1998.

The principal ground on which the petitioner has questioned the order of punishment is that the same was not preceded by an enquiry held in accordance with the procedure prescribed in Regulations 11 and 12 of the Regulations. Another plea taken by him is that in view of the judgment of acquittal rendered by the learned Judicial First Class Magistrate, Armoor, the substratum of the punishment imposed on him will be deemed to have been disappeared and, therefore, the order of punishment is liable to be quashed.

In the counter-affidavit filed by Shri M.Narayana, Chief Law Officer of the Corporation, it has been averred that the petitioner was punished because he was found guilty of causing accident by rash and negligent driving which resulted in injury to Smt.Sayamma.

Shri Narasimha Goud relied on the judgment of the Supreme Court in **Kulwant Singh Gill v. State of Punjab**[1], order dated 21-09-2004 passed by the learned Single Judge in Writ Petition No.4539 of 1997 and argued that the punishment imposed on the petitioner is liable to be declared nullity because stoppage of increment with cumulative effect is a major penalty within the meaning of Regulation 8(1)(vii) of the Regulations and such penalty could not have been imposed without holding enquiry in accordance with Regulations 11 and 12.

Learned counsel for the respondents fairly stated that in view of the judgment of the Supreme Court in **Kulwant Singh Gill**'s case (supra), the penalty of stoppage of one increment with cumulative effect or future effect is liable to be treated as major penalty. He also

admitted that before imposing the impugned penalty, respondent No.3 did not hold enquiry in accordance with the procedure prescribed under Regulations 11 and 12.

I have carefully examined the entire matter. Regulations 8(1)(iv) and (vii) of the Regulations, which have bearing on this case read as under:

"**8. Penalties:**

(1) The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon an employee namely:-

(i) xxxxxx
(ii) xxxxxx
(iii) xxxxxx
(iv) withholding of increments;
(v) xxxxxxxx
(vi) xxxxxxxx
(vii) reduction to a lower rank in the seniority list or to a lower post or time-scale, whether in the same class of service or in another class, or to a lower stage in a time-scale;"

An analysis of the above reproduced provisions makes it clear that the penalty specified in Regulation 8(1)(iv) is a minor penalty, which can be imposed without conducting enquiry in accordance with the procedure prescribed under Regulations 11 and 12, whereas the penalty specified in Regulation 8(1)(vii) is a major penalty and such penalty can be imposed only after holding regular enquiry in accordance with Regulations 11 and 12.

I n **Kulwant Singh Gill**'s case (supra), the Supreme Court interpreted Rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, which is pari materia to Regulation 8 of the Regulations and held:

"Withholding of increments of pay simpliciter

undoubtedly is a minor penalty within the meaning of Rule 5 (iv). But sub-rule (v) postulates reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not the government employee shall earn increments of pay during the period of such reductions and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay. It is an independent head of penalty and it could be imposed as punishment in an appropriate case. It is one of the major penalties. The impugned order of stoppage of two increments with cumulative effect whether would fall within the meaning of Rule 5 (v)? If it so falls Rules 8 and 9 of the Rules require conducting of regular enquiry. The contention of Shri Nayar, learned counsel for the State is that withholding two increments with cumulative effect is only a minor penalty as it does not amount to reduction to a lower stage in the time scale of pay. We find it extremely difficult to countenance the contention. Withholding of increments of pay simpliciter without any hedge over it certainly comes within the meaning of Rule 5(iv) of the Rules. But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the appellant employee is reduced in his time scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time scale of pay as a measure of penalty. The words are the skin to the language which if peeled off its true colour or its resultant effects would become apparent. When we broach the problem from this perspective the effect is as envisaged under Rule 5 (v) of the Rules. It is undoubted that the Division Bench in **Sarwan Singh v. State of Punjab and others** (1985 II LLN 212), P.C. Jain, A.C.J. speaking for the Division Bench, while considering similar question, in

paragraph 8 held that the stoppage of increments with cumulative effect, by no stretch of imagination falls within clause (v) of Rule 5 or in Rule 4.12 of Punjab Civil Services Rules. It was further held that under clause (v) of Rule 5 there has to be a reduction to a lower stage in the time scale of pay by the competent authority as a measure of penalty and the period for which such a reduction is to be effective has to be stated and on restoration it has further to be specified whether the reduction shall operate to postpone the future increments of his pay. In such cases withholding of the increments without cumulative effect does not at all arise.

In case where the increments are withheld with or without cumulative effect the government employee is never reduced to a lower stage of time scale of pay. Accordingly it was held that clause (iv) of Rule 5 is applicable to the facts of that case. With respect we are unable to agree with the High Court. If the literal interpretation is adopted the learned Judges may be right to arrive at that conclusion. But if the effect is kept at the back of the mind, it would always be so, the result will be the conclusion as we have arrived at. If the reasoning of the High Court is given acceptance, it would empower the disciplinary authority to impose, under the garb of stoppage of increments, of earning future increments in the time scale of pay even permanently without expressly stating so. This preposterous consequence cannot be permitted to be permeated. Rule 5 (iv) does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect except after holding inquiry and following the prescribed procedure.

Then the order would be without jurisdiction or authority of law, and it would be per se void. Considering from this angle we have no hesitation to hold that the impugned order would come within the meaning of Rule 5 (v) of the Rules; it is a major penalty and imposition of the impugned penalty without enquiry is per se illegal."

(underlining is mine)

In Writ Petition No.4539 of 1997 – **Masnaji Rao alias Masna v. The Managing Director, A.P.S.R.T.C.**, the learned Single Judge

relied on the judgment of the Supreme Court in **Kulwant Singh Gill**'s case (supra) and quashed the penalty of stoppage of increment with future effect by observing that the same constitutes major penalty within the meaning of Regulation 8(1)(vii) and such penalty cannot be imposed except after following the procedure prescribed under Regulations 11 and 12.

By applying the ratio of the above noted decisions to the facts of this case, I hold that the penalty imposed on the petitioner is vitiated due to violation of Regulations 11 and 12, which represents substantive embodiment of the rules of natural justice and the same is liable to be quashed. For the same reason, the appellate and revisional orders passed by respondent Nos.2 and 1 respectively are also liable to be quashed. Ordered accordingly.

The writ petition is allowed in the manner indicated above. The petitioner shall get all consequential benefits. However, it is made clear that this order shall not operate as a bar to the passing of fresh order by the competent authority in accordance with law.

As a sequel to disposal of the writ petition in the manner indicated above, WPMP.No.20927 of 1998 filed by the petitioner for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

18th April, 2007

kvni

---

[1] 1991 Supp (1) SCC 504 = 1990 II L.L.N. 1019